

104TH CONGRESS
1ST SESSION

H. R. 153

To amend the Public Health Service Act to establish Federal standards to ensure quality assurance of drug testing programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. SOLOMON introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Public Health Service Act to establish Federal standards to ensure quality assurance of drug testing programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Quality Assurance in
5 Drug Testing Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) drug abuse in the workplace is a serious na-
9 tional problem, and

1 (2) drug testing can be an effective deterrent to
2 drug abuse when administered in a manner that pro-
3 vides for quality assurance.

4 **SEC. 3. QUALITY ASSURANCE IN DRUG TESTING.**

5 The Public Health Service Act (42 U.S.C. 201 et
6 seq.) is amended by adding at the end the following new
7 title:

8 **“TITLE XXVII—QUALITY**
9 **ASSURANCE IN DRUG TESTING**

10 **“SEC. 2701. LABORATORY CERTIFICATION STANDARDS.**

11 “(a) PROHIBITION.—No individual may perform a
12 toxicological analysis in connection with any drug testing
13 program that is subject to this title unless such analysis
14 is conducted in a laboratory certified under subsection (b).

15 “(b) CERTIFICATION.—Not later than 1 year after
16 the date of enactment of this title, the Secretary shall es-
17 tablish a program for certifying laboratories that meet
18 standards for performing—

19 “(1) drug screening tests,

20 “(2) drug confirmatory tests, and

21 “(3) both drug screening and confirmatory
22 tests.

23 “(c) CRITERIA.—In establishing standards for certifi-
24 cation under subsection (b), the Secretary shall use cri-
25 teria that will maximize the predictive value of the testing

1 scheme and that take into consideration the practices, pro-
2 cedures, and experience of drug testing programs which
3 the Secretary determines are conducted in accordance with
4 appropriate standards and procedures.

5 “(d) PERIODIC REVIEW.—At least once each year,
6 the Secretary shall review, and where appropriate revise,
7 the certification criteria established under subsection (b),
8 taking into consideration the relevant scientific technical
9 advances in the area of drug testing and revisions needed
10 to reflect employer zero-drug tolerance practices.

11 **“SEC. 2702. ANTI-DRUG ABUSE POLICY.**

12 “(a) WRITTEN POLICY.—As a condition of imple-
13 menting or maintaining a drug testing program, an em-
14 ployer shall establish a written anti-drug abuse policy that
15 shall contain, at a minimum, an explanation concerning
16 the—

17 “(1) circumstances under which a drug test will
18 be administered, the procedures for notifying an em-
19 ployee of a confirmed positive result, and a state-
20 ment the policy will be administered in a consistent
21 and nondiscriminatory manner without regard to
22 whether the employee is employed in a management
23 or hourly capacity,

24 “(2) safeguards established for protecting the
25 privacy of individuals who are subject to testing, in-

1 including chain custody procedures and the limitations
2 on disclosure of the results of drug tests,

3 “(3) availability of any drug abuse treatment
4 program,

5 “(4) penalties that may be imposed for a viola-
6 tion of the anti-drug policy of the employer, and

7 “(5) procedures under which an applicant or
8 employee shall be given a reasonable opportunity to
9 explain a confirmed positive test result.

10 “(b) NOTICE.—An employer shall make a reasonable
11 effort to provide notice of the written anti-drug abuse pol-
12 icy to applicants and employees subject to testing using
13 whatever methods the employer determines to be appro-
14 priate.

15 **“SEC. 2703. DRUG-FREE AWARENESS PROGRAM.**

16 “In order for an employer to be permitted to imple-
17 ment or maintain a drug testing program, such employer
18 shall establish, as part of such drug testing program, a
19 drug-free awareness program designed to inform its em-
20 ployees concerning—

21 “(1) the dangers of drug abuse, both inside and
22 outside of the workplace,

23 “(2) the policy of the employer of maintaining
24 a drug-free workplace,

1 “(3) information as to the existence and avail-
2 ability of counseling, employee assistance, rehabilita-
3 tion, and other drug abuse treatment programs of
4 which the employer is aware, and

5 “(4) the penalties that may be imposed on ap-
6 plicants and employees who test positive for the use
7 of a drug, and for the manufacture, distribution, dis-
8 pensation, possession, or use of a drug in the work-
9 place of the employer.

10 **“SEC. 2704. STANDARDS FOR DRUG TESTING.**

11 “(a) APPLICANTS.—Nothing in this title shall be con-
12 strued to prohibit an employer from requiring, as a condi-
13 tion of employment, that an applicant submit to and pass
14 a drug test based on criteria established by the employer
15 that is designed to achieve a drug-free workplace. Refusal
16 by an applicant to submit to such a test may be treated
17 in the same manner as a failure to pass a drug test.

18 “(b) EMPLOYEES.—Nothing in this title shall be con-
19 strued to prohibit an employer from requiring an employee
20 to submit to and pass a drug test—

21 “(1) where the employer has reasonable sus-
22 picion to believe that the employee is using or under
23 the influence of a drug,

24 “(2) where such test is administered as part of
25 a scheduled medical examination,

1 “(3) in the case of an accident or incident in-
2 volving the actual or potential loss of human life, se-
3 rious bodily injury, or significant property damage,

4 “(4) during and for a reasonable period of time
5 (not to exceed 5 years) after the completion of a
6 drug abuse treatment program, or

7 “(5) in the case of sensitive employee positions,
8 work units, locations, or facilities where drug abuse
9 has been identified as a problem, on a random basis.

10 “(c) DEFINITION.—As used in this title, the term
11 ‘random’ means the selection of individuals for testing
12 based on a nondiscriminatory impartial methods so that
13 no employee is harassed or treated differently from other
14 employees in similar circumstances.

15 **“SEC. 2505. EMPLOYEE PROTECTIONS.**

16 “(a) PROHIBITIONS.—In the case of an applicant or
17 employee, it shall be a violation of this title—

18 “(1) for an employer to fail to make reasonable
19 efforts to inform the applicant or employee as to the
20 drug testing policy of the employee,

21 “(2) for an employer to take any adverse action
22 based on the unconfirmed positive results of a drug
23 test, except as provided in subsection (c),

24 “(3) for an employer, on the request of an ap-
25 plicant or employee, to fail to provide such applicant

1 or employee with a reasonable opportunity to be in-
2 formed of a confirmed positive drug test result, and

3 “(4) for an employer, on the request of an ap-
4 plicant or employee, to fail to provide such applicant
5 or employee with a reasonable opportunity to explain
6 the results of a confirmed positive test result.

7 “(b) ANTIRETALIATION PROHIBITION.—It shall be a
8 violation of this title for an employer to take retaliatory
9 action against an employee because of the exercise by the
10 employee of any right granted or protected under this title.

11 “(c) EXCEPTION FOR SENSITIVE EMPLOYEES.—
12 Pending the receipt of the results of a confirmatory drug
13 test, an employer may transfer or reassign an employee
14 in a sensitive position to another area or position without
15 any loss in compensation to such employee if the initial
16 drug test result is positive. If a confirmatory test of such
17 employee is negative, such employee shall be entitled to
18 immediate reinstatement to the position from which such
19 employee has been transferred or reassigned.

20 **“SEC. 2706. CONFIDENTIALITY.**

21 “(a) IN GENERAL.—An individual, other than the ap-
22 plicant or employee who is the subject of a drug test, shall
23 not disclose information obtained as a result of a drug
24 test, except as provided in subsection (b).

1 “(b) PERMITTED DISCLOSURES.—An employer, or
2 individual conducting a drug test on behalf of an em-
3 ployer, may disclose information acquired from a drug test
4 only to—

5 “(1) the applicant or employee taking such
6 drug test or any other individual specifically des-
7 ignated in writing by such applicant or employee
8 taking such drug test,

9 “(2) the employer, including the designated rep-
10 resentative of such employer, that requested such
11 test,

12 “(3) any court, governmental agency, arbitra-
13 tor, or mediator, in accordance with Federal or
14 State law, and

15 “(4) appropriate drug abuse treatment provid-
16 ers.

17 **“SEC. 2707. EMPLOYER PRACTICES.**

18 “(a) SAFE WORKPLACE.—Nothing in this title shall
19 be construed to prohibit an employer from taking action
20 necessary to ensure a safe workplace.

21 “(b) DRUG-FREE WORKPLACE.—Nothing in this title
22 shall be construed to prohibit an employer from taking ac-
23 tion necessary, up to and including termination, in the
24 case of applicant or employee—

1 “(1) whose drug test result is confirmed posi-
2 tive,

3 “(2) who refuses to take a drug test authorized
4 under this title, or

5 “(3) who tampers with or adulterates a drug
6 testing specimen.

7 “(c) PARTICIPATION IN DRUG ABUSE TREATMENT
8 PROGRAM.—Nothing in this title shall be construed to
9 prohibit an employer from requiring an employee to par-
10 ticipate in, and satisfactorily complete, a drug treatment
11 program as a condition of continued employment where
12 the employee has tested confirmed positive for drugs, has
13 refused to submit to a drug test, or has tampered with
14 or adulterated a drug test specimen.

15 “(d) SENSITIVE POSITION.—Nothing in this title
16 shall be construed to prohibit an employer from refusing
17 to place an employee in, or reinstate such employee, to
18 a sensitive position if such employee has tested confirmed
19 positive for drug use.

20 **“SEC. 2708. DRUG ABUSE TREATMENT PROGRAMS.**

21 “As part of the drug-free awareness program estab-
22 lished pursuant to section 2703, employers shall provide
23 information to employees concerning the existence and
24 availability of public and private drug counseling, em-

1 ployee assistance, rehabilitation, and other drug abuse
2 treatment programs of which the employer is aware.

3 **“SEC. 2709. REGULATIONS.**

4 “Not later than 1 year after the date of enactment
5 of this title, the Secretary shall—

6 “(1) establish a program for the certification of
7 laboratories for the performance of toxicological uri-
8 nalysis conducted for drug testing programs as de-
9 scribed in this title, and

10 “(2) issue such other rules and regulations as
11 may be necessary or appropriate to carry out this
12 title.

13 **“SEC. 2710. ENFORCEMENT AND RELIEF.**

14 “(a) LABORATORY CERTIFICATION STANDARDS.—
15 The certification program established pursuant to section
16 2701(b) shall be enforced in accordance with the proce-
17 dures and sanctions contained in subsections (g), (h), (i),
18 (j), (k), and (l) of section 353.

19 “(b) EMPLOYEE COMPLAINTS CHARGING UNLAWFUL
20 DISCHARGE OR DISCRIMINATION; INVESTIGATION
21 ORDER.—

22 “(1) COMPLAINT.—An employee who believes
23 that such employee has been charged or otherwise
24 discriminated against by an employer in violation of
25 this title may, not later than 30 days after such ac-

1 tion occurs, file (or have any individual file on behalf
2 of such employee) a complaint with the Secretary of
3 Labor (hereinafter referred to in this subsection as
4 the ‘Secretary’) alleging that such discharge or dis-
5 crimination violates this title. On receipt of such
6 complaint, the Secretary shall notify the individual
7 named in the complaint of such filing.

8 “(2) INVESTIGATION AND ORDER.—

9 “(A) INVESTIGATION.—On receipt of a
10 complaint filed under paragraph (1), the Sec-
11 retary shall conduct an investigation of the vio-
12 lation alleged in such complaint. Not later than
13 30 days after the receipt of such complaint, the
14 Secretary shall complete such investigation and
15 shall notify in writing the employer (and any in-
16 dividual acting on behalf of the employer) as to
17 the results of such investigation.

18 “(B) ORDER.—Not later than 30 days
19 after the completion of such investigation, the
20 Secretary shall, unless the proceeding on the
21 complaint is terminated by the Secretary on the
22 basis of a settlement entered into by the Sec-
23 retary and the employer alleged to have com-
24 mitted such violation, issue an order either pro-
25 viding the relief prescribed in this section or de-

1 nying the complaint. An order of the Secretary
2 issued under this subparagraph shall be made
3 on the record after notice and opportunity for
4 public hearing.

5 “(3) RELIEF.—If, in response to a complaint
6 filed under paragraph (1), the Secretary determines
7 that a violation of this title has occurred, the Sec-
8 retary shall order the employer who committed such
9 violation to provide such suitable relief as the Sec-
10 retary determines appropriate, including reinstate-
11 ment, promotion, and the payment of lost wages and
12 benefits.

13 “(4) REVIEW OR ORDER.—An employee or em-
14 ployer adversely affected or aggrieved by an order is-
15 sued under paragraph (2) may obtain review of such
16 order in the United States Court of Appeals for the
17 circuit in which the violation, with respect to which
18 the order was issued, allegedly occurred. The peti-
19 tion for review shall be filed not later than 60 days
20 after the issuance of the order of the Secretary
21 under paragraph (2). Review by the Court of Ap-
22 peals shall conform to chapter 7 of Title 5, United
23 States Code.

24 “(5) FAILURE TO COMPLY.—If an employee or
25 employer fails to comply with an order issued under

1 paragraph (2), the Secretary may file a civil action
2 in the United States court for the district in which
3 the violation was found to occur to enforce such
4 order. Such court, in issuing any final order under
5 this subsection, may award the costs of litigation
6 (including reasonable attorney and expert witness
7 fees) to the prevailing party.

8 “(c) AFFIRMATIVE DEFENSE.—The good faith com-
9 pliance of an employer with the standards and procedures
10 established under this title shall constitute an affirmative
11 defense against any complaint filed under subsection (b).

12 “(d) CONSTRUCTION.—Nothing in this title shall be
13 construed to require an employer to establish a drug test-
14 ing program for applicants or employees or make employ-
15 ment decisions based on such test results.

16 **“SEC. 2711. EFFECT ON OTHER LAWS.**

17 “(a) STATE LAW.—This title shall preempt any State
18 or local law, rule, regulation, order or standard that ap-
19 plies to the drug testing of an applicant or employee, or
20 that relates to any matter addressed under this title. No
21 State or local government shall adopt or enforce any law,
22 rule, regulation, ordinance, standard or order relating
23 to—

1 “(1) the certification of laboratories that per-
2 form drug testing analysis with respect to such anal-
3 ysis,

4 “(2) requirements for the conduct of drug test-
5 ing under the certification program established
6 under this title,

7 “(3) the conducting of employee or applicant
8 drug testing programs, or

9 “(4) any other matter relating to this title.

10 “(b) OTHER FEDERAL LAWS.—Nothing in this title
11 shall be construed to prohibit the Secretary of Transpor-
12 tation or the Nuclear Regulatory Commission from issuing
13 regulations with respect to drug and alcohol testing.

14 **“SEC. 2712. EFFECTIVE DATE.**

15 “‘This title shall become effective 2 years after the
16 date of enactment of this title, except that the prohibition
17 contained in section 2701(a) shall not take effect less than
18 1 year after establishment of the certification program re-
19 quired under section 2701(b).

20 **“SEC. 2713. DEFINITIONS.**

21 “‘As used in this title:

22 “(1) APPLICANT.—The term ‘applicant’ means
23 any individual who has submitted an application to
24 an employer, whether written or oral, for employ-
25 ment with such employer.

1 “(2) DRUG.—The term ‘drug’ means any con-
2 trolled substance listed in Scheduled I through V of
3 section 202 of the Controlled Substances Act (21
4 U.S.C. 812), alcohol, steroids, and any other drug or
5 medication that can interfere with employment per-
6 formance.

7 “(3) DRUG ABUSE TREATMENT PROGRAM.—
8 The term ‘drug abuse treatment program’ means a
9 program, such as an employee assistance program,
10 designed to assist an individual in dealing with prob-
11 lems caused by drug abuse.

12 “(4) DRUG TEST.—The term ‘drug test’ means
13 any test procedure used to take and analyze blood,
14 breath, hair, urine or other body fluids or materials
15 for the purpose of detecting the presence or absence
16 of a drug or its metabolites.

17 “(5) EMPLOYEE.—The term ‘employee’ means
18 an individual employed by an employer.

19 “(f) EMPLOYER.—The term ‘employer’ means an in-
20 dividual, partnership, corporation, association, or other
21 entity (including the Federal Government), that employs
22 one or more employees, and that is engaged in an industry
23 affecting commerce.

24 “(g) SENSITIVE EMPLOYEE.—The term ‘sensitive
25 employee’ means an individual employed in a position

1 whose duties, as defined by the employer, involve respon-
2 sibilities affecting such matters as national security,
3 health, or safety, environment, or other responsibilities re-
4 quiring a high degree of trust and confidence.

5 **“SEC. 2714. PROFESSIONAL ATHLETES.**

6 “For purposes of this title, professional athletes may
7 be treated in the same manner as employees who meet
8 the definition of section 2714(g), except that professional
9 athletes shall not be covered by section 2706(a).”.

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